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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,347	05/04/2001	Gi-O Jeong	1337.1033	6772

21171 7590 10/19/2005

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EXAMINER

DANIEL JR, WILLIE J

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/848,347

Applicant(s)

JEONG ET AL.

Examiner

Willie J. Daniel, Jr.

Art Unit

2686

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-15 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. This action is in response to applicant's amendment filed on 25 May 2005. **Claims 1-2, 4-15, and 17-25** are now pending in the present application.

### *Claim Objections*

2. The objections to the claims are withdrawn, as the proposed claim 9 and 22 corrections are approved.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-2, 4-8, 12-15, 17-19, 24-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kawamata et al.** (hereinafter Kawamata) (**US 6,820,259 B1**).

Regarding **Claim 1**, Fette discloses a method of distributing application software applied to an application software distribution system (114) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), comprising the steps of:

a) initializing to distribute application software files to a mobile station (200) (see col. 4, lines 30-34), where the mobile is being prepared for a software upgrade;

b) receiving an application software transmission/reception requiring message from the mobile station (200) (see col. 4, lines 26-29);

c) if the application software transmission requiring message is received, transmitting the application software file to the mobile station (200) (see col. 4, lines 25-36; col. 3, lines 22-42; Fig. 3); and

d) if the application software reception requiring message is received, receiving the application software file from the mobile station (200) (see col. 9, lines 20-28; Fig. 4), where the mobile user transmits information related to applications contained on the mobile station which will update the database of the server,

wherein c) includes:

c2) opening an application software file to be transmitted (see col. 3, lines 22-41; col. 4, lines 34-35), where the opening of the application would be inherent; and

c3) transmitting the application software file to the mobile station (200) (see col. 4, lines 34-35). Fette fails to disclose having the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system. However, the examiner maintains that the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system was well known in the art, as taught by Kawamata.

In the same field of endeavor, Kawamata discloses the feature constructing a distribution software list which reads on the claimed "transmission plan" in the software distribution station (100) which reads on the claimed "application software distribution

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system” and transferring a transmission plan message to the terminal apparatus (150) which reads on the claimed “mobile station” via the application software distribution system (100) (see col. 3, lines 11-30,55-62; col. 4, lines 15-25; Figs. 1-7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

Regarding **Claim 2**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the method as recited in claim 1, before, further comprises: e) generating a thread in the application software distribution system (see col. 4, lines 25-35; Fig. 3), where the system provides the software instructions to carry out the software upgrade or configuration in which the thread would be inherent.

Regarding **Claim 4**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 2), in addition Fette further discloses the method as recited in claim 2, before c1) further comprises:

c4) transmitting a response message to the application software transmission requiring message (see col. 4, lines 25-36; Fig. 3), where the message is sent containing the software.

Regarding **Claim 5**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 2), in addition Fette further discloses the method as recited in claim 2, wherein d) comprises:

d1) constructing a reception plan in response to an application software reception requiring message (see col. 4, lines 25-36; Fig. 3), where the constructing plan would be inherent;

d2) receiving application software file packets (see col. 4, lines 25-36; col. 8, lines 16-21; Fig. 3);

d3) determining whether there is an error in the application software file packets (see col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4); and

d4) if there is no error in the application software file packet, storing the application software file packets (see col. 5, lines 41-48; col. 7, lines 6-12; col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4).

Regarding **Claim 6**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 5), in addition Fette further discloses the method as recited in claim 5, before b), further comprises:

f) confirming that the mobile station (200) is a service subscriber (see col. 8, lines 3-14; Figs. 3 and 4), where the license is checked to make sure the mobile station is a subscriber.

Regarding **Claim 7**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 4), in addition Fette further discloses the method as recited in claim 4, further comprises:

c5) if all of the application software files are transmitted, transmitting an application software transmission completion packet to the mobile station (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4);

c6) receiving an application software transmission requirement releasing message from the mobile station (200) (see col. 9, line 5-14), where a releasing message sent by the mobile would be inherent for successful completion of application transmission; and

c7) terminating the thread (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4).

Regarding **Claim 8**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 7), in addition Fette further discloses the method as recited in claim 7, wherein the application software distribution system (114) stores charging information to make a user of the mobile station (200) chargeable for an execution of said application software program (see col. 3, line 58 - col. 4, line 2; col. 4, lines 37-39).

Regarding **Claim 12**, Fette discloses a method of distributing application software file applied to a mobile station (200) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), comprises:

a) performing an initialization in the mobile station (200) (see col. 4, lines 30-34), where the mobile is being prepared for a software upgrade;

b) transmitting an application software transmission/reception requiring message to an application software distribution system (114) (see col. 4, lines 26-33);

c) if the application software transmission requiring message is transmitted, receiving

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an application software file from the application software distribution system (114) (see col. 4, lines 25-36; Fig. 3); and

d) if the application software reception requiring message is transmitted, transmitting the application software file (see col. 4, lines 25-36; Figs. 3 and 4), where the software file is transmitted to the mobile station,

wherein c) includes:

c2) constructing a reception plan (see col. 4, lines 26-36; Fig. 3), where the plan would be inherent for receiving of software;

c3) receiving an application software transmission start packet from the application software distribution system (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the start packet would be inherent in the transmitting of the software to the mobile station;

c4) standing by to receive the application software file (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the mobile station is prepared to receive software;

c5) receiving the application software file from the application software distribution system (114) (see col. 3, lines 22-41; col. 4, lines 33-39), where the mobile station (200) receives the software from the SDC (114); and

c6) storing the application software file (see col. 3, lines 22-41; col. 4, lines 33-39; col. 5, lines 40-49), where the mobile station stores the software in the memory. Fette fails to disclose having the feature receiving a transmission plan message from an application software distribution system. However, the examiner maintains that the feature receiving a transmission plan message from an application software distribution system was well known in the art, as taught by Kawamata.



Kawamata further discloses the feature receiving a transmission plan message from an application software distribution system (100) (see col. 3, lines 11-30,55-62; col. 4, lines 15-25; Figs. 1-7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature receiving a transmission plan message from an application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

Regarding **Claim 13**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, after c), further comprising:

e) installing the application software file (see col. 4, line 36; Fig. 3), where the mobile radio loads the software.

Regarding **Claim 14**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 13), in addition Fette further discloses the method as recited in claim 13, before a), further comprising:

f) selecting an application software program necessary for the mobile station, if there is no necessary application software file (see col. 4, lines 26-36), where the SDC queries with vendors for updates when the SDC doesn't have the latest software version or updates.

Regarding **Claim 15**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 14), in addition Fette further discloses the method as recited in claim 14, after b), further comprising:

g) receiving a response to the application software reception requirement message (see col. 4, lines 34-36; Figs. 3 and 4).

Regarding **Claim 17**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, after c5), further comprising:

c7) performing an error checking of the application software file (see col. 8, lines 16-32; col. 9, lines 5-13; Fig. 3 and 4).

Regarding **Claim 18**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 15), in addition Fette further discloses the method as recited in claim 15, wherein e) comprises:

e1) receiving an application software transmission completion packet from the application software distribution system (114) (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4);

e2) determining whether there is an error in the application software file (see col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4); and

e3) if there is no error in the application software file, installing the application software file (see col. 5, lines 41-48; col. 7, lines 6-12; col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4).

Regarding **Claim 19**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 18), in addition Fette further discloses the method as recited in claim 18, further comprising:

performing a data backup for information concerned with the user of the mobile station (200) through a data backup equipment, when the mobile station (200) is not used for a constant period by automatically checking a using period of the user of the mobile station (see col. 9, lines 24-48; Figs. 1 and 4), where the server and record computer keeps track of data such as programs, records, license grants, and billing information associated with the user.

Regarding **Claim 24**, Fette discloses a computer readable record medium storing instructions for executing a method for distributing application software applied to an application software distribution system (114) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), the method comprising:

a) initializing to distribute application software files to a mobile station (200) (see col. 4, lines 30-34);

b) receiving an application software transmission/reception requiring message from the mobile station (200) (see col. 4, lines 26-29);

c) if the application software transmission requiring message is received, transmitting the application software file to the mobile station (200) (see col. 4, lines 25-36; Fig. 3); and

d) if the application software reception requiring message is received, receiving the application software file from the mobile station (200) (see col. 9, lines 20-28; Fig. 4), where the mobile user transmits information related to applications contained on the mobile station which will update the database of the server,

wherein c) includes:

c2) opening an application software file to be transmitted (see col. 3, lines 22-41; col. 4, lines 34-35), where the opening of the application would be inherent; and

c3) transmitting the application software file to the mobile station (200) (see col. 4, lines 34-35). Fette fails to disclose having the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system. However, the examiner maintains that the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system was well known in the art, as taught by Kawamata.

Kawamata further discloses the feature constructing a distribution software list which reads on the claimed "transmission plan" in the software distribution station (100) which reads on the claimed "application software distribution system" and transferring a transmission plan message to the terminal apparatus (150) which reads on the claimed "mobile station" via the application software distribution system (100) (see col. 3, lines 11-30, 55-62; col. 4, lines 15-25; Figs. 1-7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

Regarding **Claim 25**, Fette discloses a computer readable record medium storing instructions for executing a method for distributing application software applied to a mobile station (200) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), the method comprising:

a) performing an initialization in the mobile station (200) (see col. 4, lines 30-34), where the mobile is being prepared for a software upgrade;

b) transmitting an application software transmission/reception requiring message to an application software distribution system (114) (see col. 4, lines 26-33);

c) if the application software transmission requiring message is transmitted, receiving an application software file from the application software distribution system (114) (see col. 4, lines 25-36; Fig. 3); and

d) if the application software reception requiring message is transmitted, transmitting the application software file (see col. 4, lines 25-36; Figs. 3 and 4), where the software file is transmitted to the mobile station,

wherein c) includes:

c2) constructing a reception plan (see col. 4, lines 26-36; Fig. 3), where the plan would be inherent for receiving of software;

c3) receiving an application software transmission start packet from the application software distribution system (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the start packet would be inherent in the transmitting of the software to the mobile station;

c4) standing by to receive the application software file (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the mobile station stands by to receive software;

c5) receiving the application software file from the application software distribution system (114) (see col. 3, lines 22-41; col. 4, lines 33-39), where the mobile station (200) receives the software from the SDC (114); and

c6) storing the application software file (see col. 3, lines 22-41; col. 4, lines 33-39; col. 5, lines 40-49), where the mobile station stores the software in the memory. Fette fails to disclose having the feature receiving a transmission plan message from an application software distribution system. However, the examiner maintains that the feature receiving a transmission plan message from an application software distribution system was well known in the art, as taught by Kawamata.

Kawamata further discloses the feature receiving a transmission plan message from an application software distribution system (100) (see col. 3, lines 11-30, 55-62; col. 4, lines 15-25; Figs. 1-7).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature receiving a transmission plan message from an application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

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**Claims 9-11, 20-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kawamata et al.** (hereinafter Kawamata) (**US 6,820,259 B1**) as applied to claims 1, 12 above, and further in view of **Criss et al.** (hereinafter Criss) (**US 6,735,434 B2**).

Regarding **Claim 9**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses of the method wherein a) comprises:

a1) generating a program identifier (PID) allocated to transmit the application software transmission plan message (see col. 4, lines 25-36), where a program identity would be inherent. The combination of Fette and Kawamata fails to disclose having the feature storing the PID and an internet protocol address allocated to transmit the application software. However, the examiner maintains that the feature storing the PID and an internet protocol address allocated to transmit the application software was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature storing the PID and an internet protocol (IP) address allocated to transmit the application software (see col. 11, line 63 - col. 12, line 26; Figs. 4, 7a-b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kawamata, and Criss to have the feature storing the PID and an internet protocol address allocated to transmit the application software, in order to have a system and method in which software upgrades are provided

wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **Claim 10**, the combination of Fette, Kawamata, and Criss discloses everything claimed, as applied above (see claim 9), in addition Fette further discloses of performing a data backup for information concerned with the user of the mobile station (200) through a data backup equipment, when the mobile station is not used for a constant period by automatically checking a using period of the user of the mobile station (200) (see col. 9, lines 24-48; Figs. 1 and 4), where the server and record computer keeps track of data such as programs, records, license grants, and billing information associated with the user.

Regarding **Claim 11**, the combination of Fette, Kawamata, and Criss discloses everything claimed, as applied above (see claim 10), in addition Fette further discloses wherein the application software distribution system (114) differentially provides a storing space in accordance with an age or an occupation of the user of the mobile station (200) (see col. 4, lines 4-16; col. 9, lines 39-49; Figs. 1 and 4), where the record keeping is based on the user's occupation.

Regarding **Claim 20**, the combination of Fette, Kawamata, and Criss discloses everything claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, wherein the step a) comprises:

a1) generating a program identifier (PID) allocated to transmit the application software transmission plan message (see col. 4, lines 25-36), where a program identity would be inherent. The combination of Fette and Kawamata fails to disclose having the feature storing the PID and an internet protocol address allocated to transmit the application software



are stored. However, the examiner maintains that the feature storing the PID and an internet protocol address allocated to transmit the application software are stored was well known in the art, as taught by Criss.

Criss further discloses the feature storing the PID and an internet protocol (IP) address allocated to transmit the application software are stored (see col. 11, line 63 - col. 12, line 26; Figs. 4, 7a-b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kawamata, and Criss to have the feature storing the PID and an internet protocol address allocated to transmit the application software are stored, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **Claim 21**, the combination of Fette, Kawamata, and Criss discloses everything claimed, as applied above (see claim 20), in addition Fette further teaches wherein the application software distribution system (114) differentially provides a storing space in accordance with an age or an occupation of the user of the mobile station (200) (see col. 4, lines 4-16; col. 9, lines 39-49; Figs. 1 and 4), where the record keeping is based on the user's occupation.

Regarding **Claim 22**, the combination of Fette and Kawamata fails to disclose having the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station. However, the examiner maintains

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that the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station was well known in the art, as taught by Criss.

Criss further discloses the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station (see col. 14, lines 31-62), where the mobile station deletes the old version to save storing space in the memory.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kawamata, and Criss to have the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **Claim 23**, the combination of Fette and Kawamata fails to disclose having the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software. However, the examiner maintains that the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application

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software file distributed from the application software distribution system is executed, the URL being set inside the application software was well known in the art, as taught by Criss.

Criss further discloses the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software (see col. 19, lines 56 - col. 20, line 19; Figs. 7a-e and 14a-d).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kawamata, and Criss to have the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

***Response to Arguments***

4. Applicant's arguments filed 25 May 2005 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the above claims and comments in this section).

5. Regarding applicant's argument of claims 1 and 24 on pg. 11, 4<sup>th</sup> ¶, lines 5-6, "...would not recognize the feature of distributing software to be the same as transferring a transmission plan...", the Examiner respectfully disagrees. The Examiner read the "distribution software list" to be equivalent to the "transmission plan" (see claim 1). One of ordinary skill in art would recognize that the applied references share similar features for providing and/or upgrading software of mobile station that is transferred from a remote location such as software distribution computer or station (see claim 1). Since the applicant does not consider the list to equate or be similar to a plan (i.e., transmission plan), the Examiner respectfully requests the applicant to provide page(s), line(s), and figure(s) of the instant application and/or any supportive comment(s) that **clearly** explains the plan (i.e., transmission or reception plan) and distinguishes the feature from the applied references.

6. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Regarding applicant's argument of claims 1 and 24 on pg. 11, 4<sup>th</sup> ¶, lines 6-8, "...nothing...that teaches or suggests...to construct a transmission plan and transfer a transmission plan message...", the Examiner respectfully disagrees. The combination of Fette and Kawamata teaches the claimed features. Fette discloses a software distribution computer (114) that transfers software programs to a radio (200) (see col. 4, lines 25-40; abstract; Figs. 1 and 3). Kawamata further discloses the feature construct a distribution software list which reads on the claimed "transmission plan" (see col. 3, lines 11-30, 55-62; col. 4, lines 15-25; Figs. 1-7), where the software distribution station (100) develops a list of software that is to be distributed; and

transfer a transmission plan message (see col. 3, lines 11-30, 35-36; col. 4, lines 15-25, 48-51; Figs. 1-7), where the terminal apparatus (150) receives the software distribution list in which there must be a message containing the software distribution list.

Regarding applicant's argument of claims 12 and 25 in the paragraph bridging pgs. 11-12 and pg. 12, 2<sup>nd</sup> ¶, "...receiving a transmission plan message from an application software distribution system," "constructing a reception plan," "receiving an application start packet from the application software distribution system," "standing by to receive the application software file from the application software distribution system," and "storing the application software file," ...do not teach...", the Examiner respectfully disagrees. The combination of Fette and Kawamata teaches the claimed features. Fette teaches of constructing a reception plan (see col. 4, lines 26-36; Fig. 3), where the plan would be inherent for receiving of software;

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receiving an application software transmission start packet from the application software distribution system (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the start packet would be inherent in the transmitting of the software to the mobile station;

standing by to receive the application software file (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the mobile station stands by to receive software;

receiving the application software file from the application software distribution system (114) (see col. 3, lines 22-41; col. 4, lines 33-39), where the mobile station (200) receives the software from the SDC (114); and

storing the application software file (see col. 3, lines 22-41; col. 4, lines 33-39; col. 5, lines 40-49), where the mobile station stores the software in the memory. The radio (200), for example, requesting software program and/or software updates which are distributed from the software distribution computer (114) (see claim 1). Kawamata discloses the feature receiving a transmission plan message from a software distribution station (100) which reads on the claimed "application software distribution system" (see col. 3, lines 11-30, 35-36; col. 4, lines 15-25, 48-51; Figs. 1-7), where the terminal apparatus (150) receives the software distribution list in which there must be a message containing the software distribution list and the list (e.g., plan) indicates the reception order and listing of programs to be received. Also, Kawamata teaches of a start signal (see col. 4, lines 25-30), where start signal (e.g., start packet) informs the terminal apparatus (150).

7. Regarding claims 2, 4-11, 13-15, and 17-23, the claims are rejected for the same reasons as set forth above.

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8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "...system can store a user's **unused programs or data**..." (see pg. 12, 1<sup>st</sup> ¶, lines 4-9)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding applicant's argument on pg. 12, 1<sup>st</sup> ¶, lines 4-9, the applicant's argument relies on a feature(s) not recited in the claim(s).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- a. Criss et al. (US 6,643,506 B1) discloses "Wireless Software Upgrades With Version Control".
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to

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37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-7907. The examiner can normally be reached on 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJD,JR  
06 October 2005

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